

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

MACKENZIE FAYE JONES,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

No. 33811-4-II

UNPUBLISHED OPINION

Hunt, J. — MacKenzie Jones appeals the trial court’s sentencing order that she pay \$15,122.91 restitution to the family of Jeremy Puckett, who died of injuries sustained in a single-vehicle accident in which Jones was the convicted hit-and-run driver. Jones argues that (1) the essence of hit-and-run is the perpetrator’s flight from the accident scene; and (2) therefore, the requisite causal connection between the hit-and-run crime,<sup>1</sup> to which she pled guilty, and the Puckett’s fatal injuries was insufficient to support restitution under RCW 9.94A.753. The State concedes this error. Accepting the State’s concession of error, we reverse the trial court’s restitution order.

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<sup>1</sup> RCW 46.52.020(1).

## FACTS

### I. Hit and Run Fatal Accident

Jeremy Puckett was a passenger in a Mazda pickup truck that MacKenzie Jones was driving on State Route 121 in Thurston County. The truck left the road, crossed a narrow creek, and struck an embankment. The impact caused severe injuries to Puckett's head when he struck the truck's dashboard and windshield. Two witnesses stopped to assist.

As the truck settled into the creek and began filling with water, the witnesses helped Jones out of the truck. One witness climbed into the partially submerged cab to extract Puckett. A witness used a cell-phone to notify authorities, who transported Puckett to St. Peter Hospital in Olympia.

Jones suffered only minor injuries, scrambled up the creek embankment to the road, and persuaded a witness to give her a ride to a nearby automotive and towing business. There, Jones told an individual that she had just been assaulted and needed to flee the area. Jones obtained a ride to a Pierce County residence. At no time did she check on Puckett's condition, render assistance, or call for help.

The officers who responded to the accident scene were unable to locate Jones at that time. Later that day, officers tracked down the man who had given Jones a ride to Pierce County, located Jones, and arrested her.

Puckett was in serious condition and underwent emergency surgery at the hospital. Several days later, he died as a result of his head injuries.

## II. Procedure

The State charged Jones with injury hit-and-run in violation of RCW 46.52.020(1). After Puckett died from the injuries he sustained in the accident, the State filed an amended information charging Jones with hit-and-run involving a fatality in violation of RCW 46.52.020(1), (4)(a).

Jones waived her right to trial and entered a statement of defendant on plea of guilty for hit-and-run involving a fatality. Her plea agreement contained (1) the State's promise to recommend a term of confinement within the standard range of 31 to 41 months and the standard fines and assessments; and (2) a boilerplate paragraph notifying Jones that the court would order restitution if "this crime resulted in injury to any person . . ." The trial court imposed a mid-range sentence of 36 months, the fines and assessments, and restitution, but reserved setting a specific amount.

At the restitution hearing, the State asked the court to order Jones to pay restitution in the amount of \$15,122.19 for Puckett's medical and funeral expenses. Jones conceded she had been driving the truck in the single vehicle accident that caused Puckett's injuries. But she opposed restitution, arguing that the causal connection between the charged crime, hit-and-run involving a fatality, and Puckett's injuries was insufficient to support restitution under RCW 9.94A.753(5), citing *City of Walla Walla v. Ashby*, 90 Wn. App. 560, 952 P.2d 201 (1998) (it is leaving the scene that constitutes the criminal behavior of hit-and-run, not the accident itself).

The State responded that (1) the Washington State Supreme Court had overruled *Ashby* in *State v. Enstone*, 137 Wn.2d 675, 974 P.2d 828 (1999);<sup>2</sup> (2) *Ashby*, was distinguishable because

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<sup>2</sup> The State did not renew this contention on appeal, but we note that *Enstone* (holding that a trial court need not find a victim's injuries were foreseeable to order restitution for a criminal

two cars were involved in the hit-and-run in that case, whereas there was no dispute that Puckett's death resulted from a single-vehicle accident in which Jones was driving the vehicle; and (3) therefore, restitution was proper.

Reasoning that restitution is appropriate for a fatality hit-and-run conviction where it appears that the defendant is responsible for the death the sentencing court ordered Jones to pay \$15,122.19 in restitution to Puckett's family.

Jones appeals this restitution order.

#### ANALYSIS

The sole issue on appeal is whether RCW 9.94A.753 authorized the lower court's award of restitution when Jones was charged and convicted of a hit-and-run offense and Puckett's injuries were caused by the accident that Jones fled from. The State concedes that this statute does not authorize the restitution order.

The authority to impose restitution is not an inherent power of the court; rather, it is derived from statutes. *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). In enacting former RCW 9.94A.142 (2000), now codified at RCW 9.94A.753, the Legislature granted broad

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conviction) merely disapproved of a dictum comment by the *Ashby* court. *Enstone*, 137 Wn.2d at 677. After ruling that there was not a sufficient causal connection between the crime and victim's injuries, thus ending its inquiry, the *Ashby* court noted that foreseeability was also an element in the analysis. *See Ashby*, 90 Wn. App. at 565.

power to the trial court to order restitution. *Enstone*, 137 Wn.2d at 679; *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992). The Legislature has provided that the court shall order restitution “*whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property . . . unless extraordinary circumstances exist which make restitution inappropriate in the court’s judgment and the court sets forth such circumstances in the record.*” RCW 9.94A.753(5) (emphasis added).

In order for a court to award restitution, RCW 9.94A.753(5) requires a sufficient “causal connection” between the crime with which an offender is charged and convicted and the injuries for which restitution is sought.<sup>3</sup> See *Enstone*, 137 Wn.2d at 682-83; *Ashby*, 90 Wn. App. at 563; *State v. Hartwell*, 38 Wn. App. 135, 684 P.2d 778 (1984) (overruled on other grounds by *State v. Krall*, 125 Wn.2d 146, 149, 881 P.2d 1040 (1994)); *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834, *review denied*, 136 Wn.2d 1021 (1998). An exception to this general rule exists where the defendant pleads guilty and expressly agrees to pay restitution for crimes for which the defendant was not convicted. *State v. Johnson*, 69 Wn. App. 189, 191, 847 P.2d 960 (1993); *State v. Miszak*, 69 Wn. App. 426, 429, 848 P.2d 1329 (1993). Such is not the case here, however.

On appeal, Jones relies on *Hartwell* and *Ashby* to argue that (1) leaving the scene of an accident is the essence of a hit-and-run offense; (2) the accident itself is merely a predicate fact; and (3) therefore, the causal connection between Jones’ hit-and-run offense and Puckett’s injuries

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<sup>3</sup> Restitution cannot be imposed based on the defendant’s “general scheme” or acts “connected with” the crime charged, when those acts are not part of the charge. *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993).

was insufficient to support the restitution order because Puckett's injuries were not caused by Jones' flight from the scene of the accident. Acknowledging *Hartwell*, the State concedes error.

The parties' reliance on *Hartwell* is well-founded. Washington courts have uniformly followed *Hartwell* whenever confronted with similar restitution claims. *Ashby*, 90 Wn. App. at 564. *Hartwell* was involved in an accident in which three people were seriously injured. *Hartwell*, 38 Wn. App. at 136. He left the scene of the accident without rendering aid or leaving his contact information, as required by statute. On appeal, the court ruled that because the injuries took place before *Hartwell* committed the crime by leaving the scene, (1) there was an insufficient relationship between the crime and the victims' injuries; (2) if *Hartwell* had chosen to stay at the scene of the accident, rather than committing the crime of leaving, the victims' injuries would have been the same, *Hartwell*, 38 Wn. App. at 140-41; and (3) because the hit-and-run crime did not cause the victims' injuries, the trial court was not authorized to award restitution under the statute.<sup>4</sup> See also *Ashby*, 90 Wn. App. 560, relying on *Hartwell*, 38 Wn. App. at 135.

Similarly relying on *Hartwell*, we accept the State's concession and hold that there is not a sufficient causal connection between Jones' hit-and-run crime and Puckett's injuries.<sup>5</sup> It was the underlying accident that caused Puckett's fatal injuries, not Jones' flight, especially where witnesses at the scene immediately came to Jones' and Puckett's aid.<sup>6</sup> Because the losses were

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<sup>4</sup> Our analysis would be the same whether the trial court ordered restitution under RCW 9.94A.753 or RCW 9.95.210.

<sup>5</sup> In so holding, we do not condone Jones' behavior or absolve her of responsibility for the fatal harm she caused Puckett and his family. Although Jones' having caused the single-vehicle fatal accident might support a civil action for damages, that is not the issue before us in this criminal appeal of the restitution order.

not suffered as a result of the offense for which Jones was charged and convicted, the sentencing court was not authorized to award restitution. RCW 9.94A.753.

Accordingly, we reverse the restitution order and remand to the sentencing court to vacate that portion of Jones' sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Houghton, P.J.

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Bridgewater, J.

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<sup>6</sup> There is no evidence that Jones' flight from the scene caused or exacerbated Puckett's injuries, which might have supported a restitution order. *See Hartwell*, 38 Wn. App. at 140-41.